

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION at AKRON**

<b>IN RE FIRSTENERGY SOLUTIONS CORP., ET AL.,</b>  <b>Debtors</b>	<b>Case No. 18-50757-AMK</b>  <b>Chapter 11</b>  <b>Honorable Alan M. Koschik, United States Bankruptcy Judge</b>
<b>FIRSTENERGY SOLUTIONS CORP.,</b>  <b>Plaintiff,</b>  <b>V.</b>  <b>BLUESTONE ENERGY SALES CORP.,</b>  <b>Defendant.</b>	       <b>Adversary Proceeding 18-5100</b>

**DEFENDANT’S MOTION TO FURTHER AMEND DISCOVERY SCHEDULING  
ORDER AND TO AMEND EXPERT DISCOVERY SCHEDULING ORDER**

Defendant Bluestone Energy Sales Corp. (“Bluestone”), through counsel, respectfully moves the Court to amend the Discovery Scheduling Order entered on September 4, 2019 [Doc. 30] and to amend the Expert Discovery Scheduling Order entered on November 27, 2019 [Doc. 34]. In support of this Motion, Bluestone states as follows:

Richard A. Getty is the managing partner of counsel for Bluestone and the primary client contact in this matter. Since the beginning of this case, Mr. Getty has been designated as lead counsel for Bluestone. Even though C. Thomas Ezzell has handled many day-to-day matters arising in this case, Mr. Getty has been and remains Bluestone’s choice for leading its representation in this and all other matters Mr. Getty’s firm handles for Bluestone.

As the Court and opposing counsel has been somewhat made aware, Mr. Getty has been experiencing medical issues for the past two months. As a result, he was scheduled to undergo a five-level fusion surgical procedure on his back on January 9, 2020. Unfortunately, in late October 2019, Mr. Getty started to experience not only increasing back pain, but also numbness and tingling in his right foot and leg.

Mr. Getty was seen by his surgeon at the University of Cincinnati on October 29, 2019. At that appointment it was determined that Mr. Getty had developed “drop foot,” which could result in permanent neurological damage. Mr. Getty’s surgery was therefore moved to the following week, November 5, 2019, on an emergency basis. See October 31, 2019 Letter from Joseph Cheng, M.D., attached as Exhibit A.

After the surgery, and while still at the University of Cincinnati Hospital, Mr. Getty developed pneumonia, which slowed his recovery.

Mr. Getty was subsequently transferred to the Cardinal Hill facility in Lexington, Kentucky for in-patient physical therapy. Thereafter, Mr. Getty’s condition began to improve.

However, during the week of November 25, 2019 (the week after the last pretrial conference / status conference in this case), Mr. Getty began to again experience extreme pain in this back, to the point that he was unable to stand. He therefore returned to the University of Cincinnati on Wednesday, November 27, 2019. An MRI was performed and some 110 cc’s of fluid were aspirated from Mr. Getty’s back. It was determined that he had a spinal fluid leak, and at 10:00 p.m. on Thanksgiving night, Mr. Getty again underwent surgery to locate and repair the leak.

Mr. Getty has now been ordered to remain lying flat for at least three weeks. It also appears that there may still be a fluid leak, given that Mr. Getty is experiencing lingering, severe headaches, a situation that will require medical attention soon if the headaches do not abate.

Because of this unexpected complication and the required additional surgery, Mr. Getty will not be in a position to return to the office on even a part-time basis until some time in January 2020.

As Mr. Getty is lead counsel for Bluestone in this matter, it is imperative that case-critical events not take place until Mr. Getty is able to fully participate. Bluestone will continue to work with Plaintiff's counsel to schedule depositions and to conduct other discovery during Mr. Getty's recuperation. However, certain of those depositions will require Mr. Getty's presence and of course all expert discovery will require Mr. Getty's input and participation.

Since the entry of the Expert Discovery Scheduling Order, the Plaintiff FirstEnergy Solutions Corp. ("FirstEnergy" or "FES" or "Plaintiff") and the Defendant have each concluded document productions. Most individuals to be deposed have been identified. The Defendant, however, will not be able to prepare and to produce fact witnesses for depositions by the current deadline of December 20, 2019, in the absence of the participation of Mr. Getty. Furthermore, the Plaintiff recently served requests for admissions, responses to which are not due until after the current fact discovery deadline. As a result of all the foregoing, the Defendant proposes that the parties have until January 15, 2020, to complete responses to written discovery and to complete fact depositions.

The parties currently have until January 15, 2020 to serve expert reports and until February 21, 2020 to conclude expert discovery. Bluestone does not currently propose moving those deadlines. One expert deadline, however, is the date of this Motion—the deadline to

identify experts and the subject matter of expert testimony. Bluestone requests moving the subject matter deadline back two weeks to December 20, 2019 and moving the identification deadline to January 7, 2020.

Counsel for the Defendant has informed counsel for the Plaintiff of this request the afternoon of the filing of this Motion, and Plaintiff's counsel is considering the matter. An appropriate proposed order will be tendered to the Court following additional consultation.

**NOTICE**

PLEASE TAKE NOTICE that any objection to the relief sought in the foregoing Motion To Further Amend Discovery Scheduling Order And To Amend Expert Discovery Scheduling Order must be filed within 14 days, unless otherwise Ordered by the Court, from the date of service as set forth below in the Certificate of Service, and that the Court is authorized to grant the relief requested without further notice unless a timely objection is filed.

Respectfully submitted<sup>1</sup>

/s/ Richard A. Getty  
RICHARD A. GETTY (Ohio Bar #23245)  
and  
C. THOMAS EZZELL (*pro hac vice*)

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BLUESTONE ENERGY SALES CORP.

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<sup>1</sup> Mr. Getty discussed the contents of this Motion and previously approved the language used to describe his condition and medical procedures, but did not draft or personally file this Motion. This Motion was prepared and filed by C. Thomas Ezzell and others on the staff of counsel for Bluestone.

### **CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing Defendant's Motion To Further Amend Discovery Scheduling Order And To Amend Expert Discovery Scheduling Order was served on this the 6th day of November, 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and applicable Standing Order(s), if any, upon the following:

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